

EXHIBIT D

1

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE

3 In re: : Chapter 11
4 CORAM HEALTHCARE CORP:
and CORAM, INC. :
5 : Case NO. 00-3299
Debtors :
6

7 -----
8 Tuesday, February 25, 2003
9 -----

10 Pretrial examination of HON. ARLIN ADAMS,
11 held in the offices of Schnader, Harrison
12 Segal & Lewis, 1600 Market Street,
13 Philadelphia, PA 19103, commencing at
14 9:35 a.m., on the above date, before Mickey
15 Dinter, Registered Professional Reporter
16 and Commissioner of Deeds for the
17 Commonwealth of Pennsylvania.
18

19 -----
BRUSILOW & ASSOCIATES
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23
24

1 A P P E A R A N C E S:

2

3

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23 MICHAEL L. COOK, ESQUIRE
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29 SCHNADER, HARRISON, SEGAL & LEWIS
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1 Appearances Cont'g:

2

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4 WEIL, GOTSHAL & MANGES, LLP
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13 DEPARTMENT OF JUSTICE
14 BY: RICHARD SCHEPACARTER, ESQUIRE
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19 Counsel for the U.S. Government

20

21

22 Also Present: Donald J. Liebentritt,
23 for the Equity Committee

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2 between/among counsel that the reading,
3 signing, sealing, filing and
4 certification are waived; and that all
5 objections, except as to the form of the
6 question are reserved until the time of
7 trial.)

8 (EXAMINATION)

9 ARLIN M. ADAMS, being first
10 duly sworn/affirmed, was examined and
11 testified as follows:

12 BY MR. LEVY:

13 Q. I'm going to address you today as
14 Mr. Adams rather than Judge Adams. That is
15 not in any way to be disrespectful over
16 your distinguished career.

17 A. Fine.

18 (Trustee-1, the Opinion of
19 Judge Walrath, marked for
20 identification.)

21 BY MR. LEVY:

22 Q. I have asked the court reporter to
23 mark as Trustee Exhibit 1, the opinion of
24 Judge Walrath dated December 21st, 2001,

1 and I have three additional copies. I'm
2 afraid that's all I have. We are going to
3 have to ask you to share them.

4 (Trustee-2, a Motion of the
5 Chapter 11 Trustee for Authorization to
6 Enter into Termination and Employment
7 Extension Agreement with Daniel D.
8 Crowley, marked for identification.)
9

10 BY MR. LEVY:

11 Q. I have asked the court reporter also
12 to mark as Trustee Exhibit Number 2, the
13 motion of the Chapter 11 Trustee for
14 Termination and Employment Extension
15 Agreement with Daniel Crowley and here,
16 again, we have three copies.

17 (Trustee-3, a Response of
18 Chapter 11 Trustee in Opposition to
19 Equity Committee's Motion for an Order
20 Terminating Daniel Crowley Employment,
21 marked for identification.)

22 BY MR. LEVY:

23 Q. I'm going to ask the court reporter
24 now to mark as Trustee Exhibit Number 3,

1 the response of Chapter 11 Trustee in
2 Opposition to the Equity Committee's Motion
3 for an Order Terminating Daniel Crowley's
4 Employment.

5 I wonder if, in the interest
6 of saving time, we could agree that any
7 objection by any one of you would stand as
8 the objection for all of you?

9 MR. KIPNES: That's fine.

10 MR. LEVY: Thank you.

11 BY MR. LEVY:

12 Q. Mr. Adams, you were appointed as
13 trustee in this case on about March 7 of
14 this year, is that correct?

15 A. Correct.

16 MR. KIPNES: March 7 of last
17 year.

18 BY MR. LEVY:

19 Q. Last year, 2002. Shortly after
20 being appointed as trustee, you reviewed in
21 some detail the opinion of Judge Walrath
22 which we have marked as Trustee Exhibit
23 Number 1, is that correct?

24 A. Correct.

1 Q. And am I also correct that shortly
2 after that, you made efforts to have the
3 noteholders or one of them withdraw a
4 Notice of Appeal FROM Judge Walrath's
5 opinion?

6 A. I did not. I made no such effort.

7 Q. Do you know whether anyone made such
8 effort on your behalf?

9 A. Could easily be. I did not talk to
10 them.

11 Q. Have you ever asked Mr. Bressler
12 whether he made such efforts on your
13 behalf?

14 A. I don't think I asked, no.

15 Q. Did you have a discussion with the
16 debtors' counsel immediately or shortly
17 after your appointment in which you
18 discussed the possibility of their not
19 filing an appeal from Judge Walrath's
20 Order?

21 A. I have no recollection.

22 Q. Again, do you know whether
23 Mr. Bressler or any other attorney on your
24 behalf did that?

1 A. Could easily be. I don't know it of
2 my own knowledge. He may have come in and
3 said they are not going to proceed with an
4 appeal or something like that, but I have
5 not discussed it.

6 Q. You never expressed a view on
7 whether they should or should not appeal?

8 A. No.

9 Q. Now, turning to Exhibit 2 which is
10 your motion, particularly to paragraph 16
11 which you will find on page 6.

12 A. Got it.

13 Q. First, let me ask you this: Did you
14 read this Motion, Exhibit 2, before it was
15 filed?

16 A. I did.

17 Q. Did you approve of everything that
18 is in it?

19 A. Well, I don't know what you mean by
20 everything. I approved of the motion.

21 Q. Did you find anything -- fine. You
22 notice that in paragraph 16 it says, I'm
23 reading the second sentence now, "The
24 Court's findings regarding Crowley's

1 relationship with Cererus, as well as his
2 failure to timely make complete disclosure
3 of the relationship to the CHC board of
4 directors, raised a substantial question
5 for the Trustee as to whether Crowley
6 should be retained."

7 A. I see it, yes.

8 Q. My first question, sir, is which of
9 the Court's findings were being referred to
10 in that paragraph?

11 A. I couldn't tell you. If you are
12 talking about a number, I can't tell you
13 that.

14 Q. Can you recall anything in the
15 Court's findings that raised a substantial
16 question as to whether Crowley should be
17 retained?

18 A. Well, I don't remember the Court's
19 finding on a word-to-word basis. That was
20 my impression.

21 Q. Can you, as we sit here today,
22 without asking you on a word-to-word basis,
23 tell me your understanding of any one of
24 the Court's findings that raised a

1 substantial question in your mind?

2 A. The fact that Mr. Crowley had a
3 compensatory relationship with Cerberus
4 that had not been disclosed.

5 Q. Was it your understanding, sir, that
6 it was the fact that if it had not been
7 disclosed was what raised a substantial
8 question or was it the fact simply that
9 there is a compensatory relationship?

10 A. My impression was a combination of
11 the two factors.

12 Q. And it's your understanding then
13 that the compensatory relationship standing
14 alone would not have been one of the things
15 that raised a substantial question of you,
16 is that right?

17 MR. KIPNES: Objection to
18 the form.

19 THE WITNESS: I did not
20 dissect it to that extent.

21 BY MR. LEVY:

22 Q. I wonder, sir, if you would look at
23 Exhibit 1, particularly at page 22.

24 A. I have it.

11

1 Q. Do you notice that Judge Walrath
2 says there in the heading, D, "Disclosure
3 does not cure the conflict of interest"?

4 A. I can't find what you are talking
5 about. Maybe you can point that out. I
6 see it, yes.

7 Q. Do you see that Judge Walrath's
8 finding was that a disclosure does not cure
9 the conflict of interest?

10 A. Correct.

11 Q. Now in light of that, will you agree
12 with me that, perhaps, one of your
13 substantial questions as to whether Crowley
14 should be retained was solely the conflict
15 of interest as distinguished from a lack of
16 disclosure?

17 MR. KIPNES: Objection to
18 the form of the question.

19 THE WITNESS: Well, I don't
20 think that the judge was referring to
21 retaining Crowley in writing this.

22 BY MR. LEVY:

23 Q. I'm sorry?

24 A. I did not understand that the judge

1 was referring to the retention of
2 Mr. Crowley when she wrote Section D on
3 page 22. I didn't think that was the issue
4 before her. It's important in that
5 connection to look at footnote 16.

6 Q. I'm sorry?

7 A. It is important in connection with
8 your question to look at footnote 16 at
9 page 22.

10 Q. Why is it important, sir?

11 A. Because, I think, in my opinion, it
12 discloses what the Court was considering
13 because she says even if the debtors
14 corporate policy did not require such
15 disclosure, the Court would expect the
16 debtor in possession to disclose to the
17 court and its creditors any agreement which
18 its senior management might have with its
19 largest creditors similar to the agreement
20 at issue here.

21 I think what the judge was
22 doing, and the footnote was explaining to
23 the reader further the discussion that she
24 was having under D; at least, that's my

1 impression.

2 Q. Would you look at page 15 of the
3 opinion.

4 A. Got it.

5 Q. Note that the judge said "given the
6 fact that Crowley had not disclosed the
7 agreement in the first place, the debtor
8 should have asked for full disclosure and
9 required that Crowley sever all agreements
10 with Cereberus as a condition of continued
11 employment."

12 A. I see it.

13 Q. Did you take that into consideration,
14 this is, page 15 of the opinion? I have a
15 different pagination on my copy. Now, I
16 will show it to you. It's at the bottom of
17 22 and the top of 21 and the -- the bottom
18 of 21 and the top of 22.

19 A. Yes, I see it.

20 Q. Was that one of the -- did that
21 raise a substantial question for you as to
22 whether he should be retained?

23 A. I think it raised a question. I
24 don't know whether I would characterize it

14

1 as substantial. I know I thought about it
2 and considered it and discussed it.

3 Q. Who did you discuss it with?

4 A. My counsel.

5 Q. Anybody else?

6 MR. KIPNES: We need a
7 timeframe on that question, Mr. Levy.
8 Ever?

9 BY MR. LEVY:

10 Q. At about the time -- the timeframe
11 would be from the time you were appointed
12 and read this opinion, let's say, through
13 the end of March.

14 A. March of this year?

15 Q. March of the year you were
16 appointed.

17 A. I was appointed around March 7. For
18 those 21 days?

19 Q. Right.

20 A. I don't think I discussed it with
21 anyone, except my counsel. I can't recall
22 in any event.

23 Q. Was a substantial question as to
24 whether he should be retained raised in

1 your mind by the fact that the United States
2 Trustee in the Motion for the Appointment
3 of a Chapter 11 Trustee had indicated that
4 Mr. Crowley should be removed?

5 A. We took all of that into
6 consideration, yes.

7 Q. Were you aware of that?

8 A. I read his, I forget whether it was
9 the Trustee's letter or motion. I forget
10 now what the document was, but I was aware
11 of that.

12 Q. Were you aware, also, that the
13 noteholders filed a brief in which they
14 said Mr. Crowley should be removed?

15 A. I read a lot of papers. I can't sit
16 here now and tell you what I read about a
17 year ago. I knew that was a very important
18 question.

19 Q. The question of whether he should be
20 retained was a very important question?

21 A. To me.

22 Q. To you?

23 A. Yes.

24 Q. And what factors that you have not

16

1 already mentioned did you take into account
2 in reaching a conclusion as to whether he
3 should be retained or not retained?

4 MR. KIPNES: When?

5 THE WITNESS: In March.

6 BY MR. LEVY:

7 Q. In March.

8 A. One of the things I did was,
9 perhaps -- one of the first things I did
10 was to arrange to go out and interview
11 Mr. Crowley, which I did, and interviewed
12 the senior members of Coram and,
13 nonetheless, it constituted a very
14 important question in my judgment.

15 Q. Tell us what happened. Do you
16 recall about when you visited with
17 Mr. Crowley for the first time?

18 A. I think the --

19 MR. KIPNES: In person?

20 BY MR. LEVY:

21 Q. In person.

22 A. I think the third week of March.

23 Q. Did you have any discussions with
24 him on the telephone other than arranging

1 when you were going to meet him prior to
2 going out to see him?

3 A. Well, I know I had discussions with
4 him on the telephone.

5 Q. What do you recall about those
6 discussions?

7 A. Good God, this is still the March
8 time period.

9 Q. Everything is until I tell you
10 otherwise.

11 A. I must have said how are things
12 going? Are the sales holding up? What is
13 the status of the staff? What is their
14 morale. Questions along those lines.

15 Q. Did you ask him in that phone call
16 whether he had severed his relationship
17 with Cereberus?

18 A. I may have.

19 Q. Do you recall whether you did or
20 didn't?

21 A. I can't specifically recall that
22 discussion.

23 Q. Did you make any notes of that
24 conversation you had on the telephone with

1 him?

2 A. No, I did not.

3 Q. You went out to see him, roughly,
4 the third week in March?

5 A. Roughly.

6 Q. How much time did you spend
7 face-to-face with him on that occasion?

8 A. A couple of hours, I guess.

9 Q. What did you talk about?

10 A. Talked about the conflict problem;
11 told him that I was troubled by it; talked
12 about the status of the company and what he
13 considered to be the future possibilities;
14 talked about his relationship with his
15 executive staff; talked about the situation
16 regarding the outlying facilities.

17 Q. The, I'm sorry?

18 A. Outlying facilities other than the
19 one in Denver. I may be repeating: Talked
20 about the situation in the industry, the
21 future of the industry. I think we got
22 into the question of the claim of the IRS.
23 I think we got into the question of Coram's
24 claim against Price-Waterhouse. I think we

1 got into the Arnet litigation very briefly.

2

3

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8 Q. Did you ask him whether he was still
9 getting \$80,000 a month at that time from
10 Cerberus?

11 A. I don't think I did.

12 Q. Is that a matter not of interest to
13 you?

14 A. Well, I didn't have a figure of
15 \$80,000 in my mind. He had told me that he
16 had terminated his relationship, so there
17 would be no occasion to say how about the
18 80,000.

19 Q. You knew about the 80,000 from Judge
20 Walrath's opinion?

21 A. Correct.

22 Q. When did he tell you he had
23 terminated his relationship?

24 A. I don't know whether it was during

1 the telephone call or when I was out there.

2 I can't tell you that.

3 Q. And did you -- what was your
4 understanding of what he meant when he said
5 terminated?

6 A. That he did not have a contractual
7 relationship to Cerberus.

8 Q. Meaning that he was not obligated to
9 perform for them?

10 A. And they were not obligated --
11 except that he did indicate, I guess, that
12 they owed him some money. I believe he
13 said that during the discussion that we
14 had.

15 Q. Did he say he was not doing any work
16 for Cerberus at that time?

17 A. He did.

18 Q. Did he say he was not going to do
19 any work for Cerberus?

20 A. I don't think we talked about the
21 future with Cerberus. He talked about the
22 present.

23 Q. Was the future relationship between
24 Crowley and Cerberus of interest to you at

1 that point in making your decision as to
2 whether to retain him?

3 A. Yes.

4 Q. Why didn't you ask him?

5 A. There were many things on my mind at
6 the time. I can't answer that question. I
7 don't know.

8 Q. You said when -- I made a list of
9 the things you talked about. You said you
10 talked about the conflict of interest.
11 What else other than what you just
12 testified to either in the phone call or in
13 your meeting in March did you discuss with
14 Mr. Crowley relating to the subject of
15 conflict of interest?

16 A. I recall that he said that it was
17 very unfortunate that this had developed.
18 It was not done intentionally. If somebody
19 had asked him, he would have disclosed it.
20 He thought that it may have been an error
21 on the part of his counsel. I can't recall
22 very much more than that.

23 Q. Did you distinguish in that
24 conversation between two periods, the first

1 period would be the year 2000 leading up to
2 Judge Walrath's opinion of December 21st,
3 2000, where there was no disclosure? Do
4 you recall that?

5 A. Did I distinguish --

6 Q. In the conversation, did either of
7 you distinguish that?

8 A. I don't think I distinguished that,
9 no.

10 Q. Are you familiar with the fact that
11 at the end of December 2000 Judge Walrath
12 denied confirmation of the first plan
13 because there was a conflict of interest
14 which you had had tainted the debtor,
15 tainted, perhaps, Cerberus?

16 A. Do I remember --

17 MR. GODNICK: Objection to
18 the characterization of the opinion.

19 THE WITNESS: I remember
20 reading her opinion. I can't tell you
21 the exact language. She raised the
22 question, certainly.

23 BY MR. LEVY:

24 Q. Did she raise the question or was

1 that a basis, to your understanding, of her
2 finding that there was no good faith with
3 respect to the first plan?

4 A. I don't think I can, without having
5 her opinion in front of me, answer
6 questions of that sort.

7 Q. Would you look at page 7 of Judge
8 Walrath's 2001 opinion. There is a
9 paragraph there that begins "At the
10 conclusion."

11 A. All right.

12 Q. "At the conclusion of the
13 confirmation hearings, we found that
14 Crowley's consulting agreement with
15 Cerberus created an actual conflict of
16 interest on his part. We further held that
17 the conflict of interest has tainted the
18 debtor's restructuring of its debt, the
19 debtor's negotiations towards the plan,
20 even the debtor's restructuring of its
21 operations," and the judge cites to her
22 early opinion.

23 Does that refresh your
24 recollection as to whether you had a

1 discussion with Crowley during March
2 focusing on the first year's conflict of
3 interest?

4 A. I don't recall that we divided it
5 timewise, our discussion. We may have. I
6 just don't recall.

7 Q. Do you recall, then, discussing the
8 findings in the second opinion that after a
9 year nothing had changed?

10 A. I don't recall discussing with
11 Mr. Crowley a question of findings. He is
12 not a lawyer. I did not understand that he
13 would be able to distinguish findings and
14 conclusions. We covered the subject.

15 Q. Wasn't it of concern to you because
16 you, of course, understand what findings
17 are?

18 A. Certainly.

19 Q. That here was an unappealed, final
20 order, talking about the 2001 opinion now,
21 that found there was a conflict for a
22 second time that was there for a finding
23 that is subject to, perhaps, a collateral
24 estoppel rule and that you were dealing

25

1 with a man at that point who the judge said
2 had a conflict of interest that tainted the
3 debtor? Did that concern you at that time?

4 MR. KIPNES: Objection to
5 the form of the question. Go ahead and
6 answer it. I won't get into a debate
7 with you as to the misstatement of the
8 law.

9 MR. MILLER: Objection. It
10 misstates the opinion.

11 MR. KIPNES: Do you have the
12 gist of the question?

13 (Question read back.)

14 THE WITNESS: It concerned
15 me not only at that time, but all
16 through this proceeding.

17 BY MR. LEVY:

18 Q. Did it concern you as you met
19 Crowley and talked to him on the phone that
20 the judge had found in the 2001 opinion
21 four or five times that she didn't believe
22 his testimony under oath?

23 A. I did not -- I don't think I
24 discussed that with him, no.

1 Q. Were you aware of it?

2 A. Of what the opinion said.

3 Q. Were you aware that Judge Walrath
4 found several times, four or five times,
5 that his testimony, she simply didn't
6 believe or that his conclusion was
7 incredible?

8 A. I can't say whether she found it
9 four or five times. I know she raised that
10 question.

11 Q. Would you look at footnote 7 to
12 Judge Walrath's opinion.

13 A. The question is?

14 Q. Does that refresh your recollection
15 as to one time when she wouldn't credit his
16 testimony?

17 MR. GODNICK: Objection. I
18 don't think the judge's recollection
19 needs to be refreshed. He indicated --

20 MR. LEVY: Okay, fine.

21 BY MR. LEVY:

22 Q. Can you answer the question?

23 A. Well, that doesn't -- today's
24 reading doesn't refresh my recollection.

1 That was my impression right from the
2 beginning that she had a concern about his
3 testimony on whether he had advised the
4 directors.

5 Q. Did she, do you recall now, that she
6 also, and now look at page 15 where the
7 judge says "Crowley himself demonstrates
8 the insidious effect of that conflict when
9 he caused the debtors to pay in cash rather
10 than notes the 6.3 million dollar interest
11 payment due to Noteholders immediately
12 before the bankruptcy filing. Crowley's
13 explanation that the payment was made to
14 maintain the Noteholders' support is
15 unconvincing."

16 MR. KIPNES: What is the
17 question?

18 BY MR. LEVY:

19 Q. Did the fact that the judge found
20 his testimony under oath to be
21 unconvincing, perhaps, give you some
22 caution as to what he said to you might be
23 unconvincing?

24 MR. KIPNES: Objection.

1 That is like saying --

2 MR. LEVY: The rule is, you
3 object to the form. Let's stop with
4 that.

5 BY MR. LEVY:

6 Q. Would you answer.

7 MR. GODNICK: I would like
8 to understand the basis.

9 MR. KIPNES: I think taking
10 a quote out of context misstates what
11 the judge is saying.

12 MR. LEVY: Did I read it
13 wrong?

14 MR. KIPNES: No.
15 Unconvincing.

16 MR. LEVY: That's what I
17 said.

18 MR. KIPNES: Right.

19 THE WITNESS: Absolutely.

20 MR. LEVY: Same page.

21 MR. KIPNES: Can we
22 eliminate the commentary on the answers
23 to the questions if I can't comment on
24 the basis for my objection?

1 MR. LEVY: Hush; be quiet.

2 MR. KIPNES: Don't tell me

3 to hush.

4 BY MR. LEVY:

5 Q. On the same page, Judge Walrath
6 found that Crowley's assertion that he
7 preferred to pay cash rather than add the
8 amount to the debtors' different structure
9 is also incredible. Do you see that?

10 A. I see it.

11 Q. Did that give some concern what
12 Mr. Crowley told you then in March and
13 anytime after that might be incredible?.

14 MR. GODNICK: Objection to
15 the form.

16 THE WITNESS: Well, when a
17 judge says that the explanation is
18 incredible, I don't think the judge is
19 quite saying that the person asserting
20 it is not telling the truth. Maybe
21 that's true. I think what the judge may
22 be saying is that that is not a
23 satisfactory explanation; and you and I
24 know in the course of oral argument, a

1 judge will say to the attorney "I think
2 that explanation to my question is not a
3 credible explanation." The judge is not
4 saying to the attorney "I think you are
5 lying." He is saying it's not very
6 convincing.

7 BY MR. LEVY:

8 Q. How about on the same page where she
9 says in commenting on some testimony, "We
10 quite simply do not believe that this --"
11 do you see that?"

12 A. I read that.

13 Q. Is that a suggestion that he was not
14 telling the truth?

15 A. When I read this opinion and when I
16 saw Mr. Crowley, I knew that I had to be
17 careful in talking with him and evaluating
18 his answers to questions that I posed.

19 Q. Why?

20 A. Because of what the judge had
21 written.

22 Q. Because that lead you to what
23 conclusion, that you couldn't believe him?

24 A. Not necessarily. Because I like to

1 give people the benefit of the doubt. It's
2 that -- given the statement of a federal,
3 official bankruptcy judge who expressed
4 concern that caused me to take that into
5 very serious consideration.

6 Q. And did you continue to take that
7 into serious consideration?

8 A. I did.

9 Q. And do you to this day?

10 A. I do.

11 Q. Do you think Mr. Crowley is an
12 honest man?

13 A. I do. When you say "honest," did he
14 ever do something that may have been
15 improper? I think he did. This is an
16 instance of it. Do I think that he lied to
17 me since I have known him? I have no
18 occasion to believe that. I don't think
19 that anything he has told me thus far
20 represents a lie. Do I agree with
21 everything he has said? Of course not. He
22 is a salesman. He is an executive and he
23 does what salesmen, lawyers, doctors,
24 housewives, anybody else does. Sometimes

1 he exaggerates. He sometimes puts his own
2 spin on an issue. That doesn't quite get
3 into the area, as far as I'm concerned, of
4 credibility, but it might as far as you are
5 concerned. I can't speak for you.

6 Q. Did the fact he filed an affidavit
7 in the Bankruptcy Court in which he said he
8 was receiving no compensation from Cerberus
9 for work on Coram cause you any concern in
10 light of Judge Walrath's finding, not
11 statement, but finding that, in fact, she
12 didn't believe that statement?

13 A. Well, I think, we are really
14 repeating now what you have been asking me.
15 I have given you my best answer.

16 Q. I was asking you a question now
17 about the affidavit. The others were about
18 what she said.

19 A. Yes. I tried to make it clear in
20 answer to your various questions that I was
21 concerned, yes.

22 Q. Did you consider the fact that that
23 by itself was perjury in bankruptcy fraud?

24 MR. KIPNES: Objection to

1 the form of the question.

2 THE WITNESS: No, I did not.

3 BY MR. LEVY:

4 Q. Do you think you should have?

5 A. Did I independently say now that
6 must be perjury? No, I did not say that.

7 Q. I said did you consider it?

8 A. Yes, of course.

9 Q. And you came to what conclusion as
10 to when you considered whether that was
11 perjury or bankruptcy fraud? What
12 conclusion did you come to?

13 A. I came to the conclusion that we had
14 to be very, very careful in handling
15 Mr. Crowley.

16 Q. With respect -- that is not
17 responsive. What conclusion did you come
18 to as to whether that was bankruptcy fraud
19 or perjury?

20 MR. KIPNES: Asked and
21 answered. It hasn't been answered. Do
22 you want to go back about four
23 questions?

24 THE WITNESS: I don't think

1 I can add anything to what I have said
2 on this.

3 MR. LEVY: I would like to,
4 if you can find it -- I really don't
5 believe it was answered.

6 MR. KIPNES: He said he did
7 not independently look at them.

8 BY MR. LEVY:

9 Q. Did you consider -- think you said
10 you did consider whether that was fraud,
11 whether that was bankruptcy fraud or
12 perjury, didn't you?

13 A. I did not consider in a discrete
14 fashion that that specific point was
15 different from my other evaluation of
16 Mr. Crowley. If I said that to you, I
17 would be misstating my statement of mind.
18 That was not my state of mind. Let me add
19 that in approaching Mr. Crowley, I had, as
20 a backdrop of my discussions, the fact that
21 the judge had raised very substantial
22 questions. My main concern in taking over
23 this assignment was to get this company out
24 of bankruptcy as quickly as I could. That

1 was foremost in my mind.

2 What your questions are
3 doing today is making the item of
4 Mr. Crowley's credibility the foremost
5 consideration. I have to tell you it was
6 not the foremost consideration that I had
7 in preparing him in approaching my job. I
8 sought that my main responsibility was to
9 the Court and to the creditors, to the
10 equity people, to maximize the assets,
11 minimize the liabilities and to do it as
12 promptly as I could and that I was not
13 there as a prosecutor or in that type of
14 role. Maybe I should have been. I did not
15 perceive my job as such.

16 My discussions with the
17 bankruptcy Trustee did not indicate that.
18 When I had my interviews, that was not a
19 major issue. As a matter of fact, it was
20 not even discussed with the United States
21 Trustee. The Trustee emphasized that there
22 were two factions opposed to each other and
23 that the reason that the Trustee had
24 recommended me was because of the

1 outstanding job I had done in New Era in
2 reconciling two factions or various
3 factions; and that was primarily the guide
4 that I used in approaching this matter.

5 Now, based on your
6 questions, perhaps, I should have said that
7 the main job that I had was to evaluate the
8 credibility of Mr. Crowley. You may be
9 right, but I did not perceive it that way.

10 Q. Did you believe --

11 A. When you came in to see me shortly
12 after my appointment, you did not emphasize
13 this credibility point. That's my
14 recollection. You were very friendly and
15 you talked about the necessity of maximizing
16 the return to equity. You told me that
17 there was tension between the equity
18 position and the Noteholders and you led me
19 to believe that I had to use my intelligence
20 and my experience in trying to resolve that
21 tension and to do it as promptly as
22 possible. Maybe I misunderstood what you
23 were talking about. I don't think so. We
24 had a very cordial meeting, as you will

1 recall. In the meeting, and I do not have
2 any recollection of your emphasis on the
3 credibility of Mr. Crowley.

4 Q. That meeting was accompanied by
5 Mr. Liebentritt on March 15?

6 A. Yes.

7 Q. Isn't it true that we spent a lot of
8 time at that meeting discussing the claim
9 and potential RICO claim that the Equity
10 Committee believed it had against Crowley
11 and the Noteholders and the fact that there
12 was evidenced in a motion that the Equity
13 Committee had filed some months before
14 seeking leave to file it? Do you remember
15 that discussion?

16 MR. KIPNES: I think that is
17 beyond the scope. I will let him
18 answer.

19 MR. NEUWIRTH: Objection to
20 the form.

21 THE WITNESS: I remembered
22 that you or Mr. Liebentritt mentioned
23 that in passing. There was no lengthy
24 discussion about that subject, no.

1 BY MR. LEVY:

2 Q. If Mr. Liebentritt were to testify
3 that he recalls specifically saying you
4 must remove Crowley, would you say he was
5 incorrect or simply that you have no
6 recollection?

7 A. I don't think he used any such
8 expression with me. I think he said in
9 passing, "you ought to think about removing
10 Mr. Crowley."

11 Q. You do recall, of course, that on
12 many subsequent occasions the Equity
13 Committee asked you to remove Mr. Crowley?

14 A. I don't know whether I would say
15 many subsequent occasions. On subsequent
16 occasions I do recall that.

17 Q. Let's get back to your statement
18 about what you understood your purpose was
19 to be. Let me ask you this: Immediately
20 after reading the opinion, which you did, I
21 think the time records show for 2.6 hours,
22 re-read opinion, right after March 7, did
23 you believe that Crowley at that time had a
24 conflict of interest?

1 A. At that particular moment?

2 Q. Yes. Based on reading Judge
3 Walrath's opinion before you talked to
4 Crowley.

5 A. I don't know whether I could use the
6 word did I believe. I thought it was a
7 problem. I don't think I had a belief.

8 Q. Judge Walrath had found in her
9 opinion, didn't she, she had found that
10 Crowley had a conflict of interest?

11 A. Correct.

12 Q. Now, it's March 7 or 8 or 9, you
13 read the opinion, you have not talked to
14 Crowley. Did you have any reason to
15 question Judge Walrath's finding that
16 Crowley had a conflict of interest?

17 A. I didn't question it, no.

18 Q. Okay. Would it be fair to say, at
19 least at that point, that he had a conflict
20 of interest?

21 MR. GODNICK: Is the
22 question whether as of March 7, that is
23 the date that you referenced, a conflict
24 existed or, rather, back in December at

1 the point --

2 MR. LEVY: March 7.

3 MR. GODNICK: -- when the
4 judge wrote her opinion that a conflict
5 existed?

6 MR. LEVY: When the judge
7 wrote the opinion March 7, 8 and 9
8 whether she believed there was a
9 conflict of interest. I think he said
10 yes.

11 MR. GODNICK: As of that
12 date?

13 MR. LEVY: Yes.

14 THE WITNESS: I didn't form
15 that intent. I didn't form that mens
16 rea at that point.

17 BY MR. LEVY:

18 Q. You did not?

19 A. No. I think the mens rea that I
20 formed was, Judge Adams, there is a problem
21 here, you have to explore it. I didn't
22 know whether he had resolved it. I didn't
23 know what was going on. I had just been
24 appointed. The Trustee in bankruptcy or --

1 there were two trustees at the meeting.
2 They had emphasized something different
3 with me: The necessity of reconciling
4 varying interests and to do it very
5 promptly and to get on the job, so I
6 didn't, I began forming beliefs. That just
7 is not what I was thinking of doing at the
8 time. I would mislead you if I told you
9 otherwise.

10 Q. It says at the bottom of page 13 of
11 the opinion, last sentence, "This is an
12 actual conflict of interest as we concluded
13 at the first confirmation hearing."

14 You understood that to be
15 Judge Walrath's finding?

16 A. Yes.

17 Q. You had no reason to doubt at this
18 time, at that point?

19 A. No, I did not. I don't doubt it
20 now.

21 Q. You don't doubt it now. You think
22 he has got a conflict of interest now?

23 A. No. As of the time she wrote it, I
24 think she was correct, absolutely. I did

1 not know what the situation was on March 7
2 or when I met you and Don Liebentritt. How
3 could I have known it? I was just
4 appointed. I just read these opinions and
5 I know you have a very high regard for me,
6 but I can assure you I don't have that type
7 of ability.

8 Q. I do have a high regard for you.

9 When did, in your view, the
10 conflict of interest that you thought he
11 had, when did it go away? When did it stop
12 being a conflict of interest?

13 MR. GODNICK: Objection to
14 the mischaracterization of the witness's
15 prior response. He didn't believe --
16 as of March 7, he believed a conflict of
17 interest existed. He testified that in
18 December at the point in time that Judge
19 Walrath wrote her opinion there existed
20 a conflict of interest.

21 THE WITNESS: I thought it
22 was dissipated when I went out and
23 talked to Dan Crowley.

24 BY MR. LEVY:

1 Q. What did he say to you that
2 dissipated that conflict?

3 A. I thought he told me that he had
4 terminated all contractual arrangements
5 with Cerberus; that the only thing that
6 remained was his claim against them for
7 large sums of money. I really didn't
8 address that. It was none of my concern.

9 Q. When he told you that, Mr. Adams,
10 did he show you any documents?

11 A. No.

12 Q. Did you ask him how he went about
13 terminating his relationship with Cerberus?

14 A. I don't recall doing that. But I do
15 recall when I came back to Philadelphia, I
16 discussed this matter at considerable
17 length with Mr. Bressler, my counsel.

18 Q. In order to get what kind of advice
19 from him?

20 A. What kind of advice did he give me?

21 MR. KIPNES: No.

22 BY MR. LEVY:

23 Q. What kind of advice were you trying
24 to get from him?

1 MR. KIPNES: I will help
2 you, Richard. Don't -- then, I will
3 instruct him not to answer when you ask
4 him the question.

5 THE WITNESS: Give me that
6 question.

7 MR. KIPNES: What kind of
8 legal advice were you seeking?

9 BY MR. LEVY:

10 Q. I said what kind of advice were you
11 seeking from him?

12 MR. KIPNES: You are
13 correct, I'm sorry.

14 THE WITNESS: I was seeking
15 his guidance as to what to do in this
16 situation. He was very well aware of
17 the opinion. He discussed it with me a
18 number of times. I told him of my
19 meeting in Denver. And the question was
20 should we terminate the contract at that
21 time? That's my best recollection. I
22 would have to talk to him, but. . .

23 BY MR. LEVY:

24 Q. Were you asking for his business

1 advice as to whether this was a good or bad
2 thing to do in part, at least?

3 A. I believe in part, yes. In part.

4 Q. What did he say in the part where
5 you were seeking his business advice?

6 A. My recollection is that Barry
7 Bressler said this is a matter we have to
8 keep very much in mind. As we go forward,
9 it's one of the factors that you will have
10 to weigh in whether you want to go forward
11 with Dan Crowley.

12 Q. Did you at or about that time -- did
13 Mr. Bressler tell you you ought to see the
14 documents that evidence the termination, if
15 there were any?

16 A. I can't recall that he said that. I
17 assume that he had reviewed the documents.

18 Q. What documents?

19 A. Whatever documents there may be.

20 Q. Are you aware that there were any
21 documents at that time or were you then
22 aware that there were documents that
23 terminated the relationship?

24 A. I can't say. I can't recall that.